

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
SPARTANBURG DIVISION

Earl Gavin, ) Case No. 7:18-cv-00523-DCC  
                )  
                )  
Plaintiff,     )  
                )  
                )  
v.               )                           **ORDER**  
                )  
                )  
Trans Union LLC, )  
                )  
                )  
Defendant.     )  
                )  
\_\_\_\_\_)

This matter is before the Court on Defendant's Motion to Dismiss. ECF No. 28. Plaintiff filed a Response in Opposition, and Defendants filed a Reply. ECF Nos. 32, 24. In accordance with 28 U.S.C. §636(b) and Local Civil Rule 73.02(B)(2), (D.S.C.), this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pre-trial proceedings and a Report and Recommendation ("Report"). On September 24, 2018, the Magistrate Judge issued a Report recommending that the Motion to Dismiss be granted. ECF No. 108. The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the Report and the serious consequences if she failed to do so. Plaintiff filed objections, and Defendant filed a Reply. ECF Nos. 111, 113.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or

modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

In his objections, Plaintiff raises for the first time that he submitted letters to Defendant that were not included in the response to his request for his full credit file. Accordingly, because Plaintiff has identified what information is actually missing from what he received from Defendant, the Court finds this action is distinguishable from the line of cases cited by the Magistrate Judge. However, Defendant and the Magistrate Judge are correct that, as it currently stands, Plaintiff’s Amended Complaint fails to state a claim upon which relief can be granted.

Therefore, the Magistrate Judge’s Report is adopted as modified and the Motion to Dismiss is **GRANTED**. The Amended Complaint is dismissed without prejudice. Plaintiff is granted until April 22, 2019, to file a Second Amended Complaint, failing which the case will be dismissed. This deadline will not be extended.

IT IS SO ORDERED.

s/Donald C. Coggins, Jr.  
United States District Judge

March 25, 2019  
Spartanburg, South Carolina

**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.